UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
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IVAN ANTONYUK; COREY JOHNSON, ALFRED TERRILLE; JOSEPH MANN; LESLIE LEMAN; and LAWRENCE SLOANE,

Plaintiffs,

vs. 1:22-CV-986

KATHLEEN HOCHUL, in her Official Capacity as Governor of the State of NY, et al.,

Defendants.
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Transcript of a Motion Hearing held on September 29, 2022, at the James Hanley Federal Building, 100 South Clinton Street, Syracuse, New York, the HONORABLE GLENN T. SUDDABY, United States District Judge, Presiding.

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A P P E A R A N C E S

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(Open Court, 11:09 a.m.)

THE CLERK: Case is Ivan Antonyuk versus Kathleen Hochul, et al., 22-CV-986, Counsel, please note your appearances for the record.

MR. STAMBOULIEH: Stephen Stamboulieh for the plaintiffs.

MR. THOMPSON: James Thompson from the Office of the Attorney General for the state defendants.

MR. McCARTIN: And Michael McCartin with the Attorney General's Office as well, your Honor, for the state defendants.

THE COURT: Okay, good morning, everyone. We're here to hear argument on the TRO, and we'll follow the same order we did in the last arguments. We'll have plaintiff present their arguments, give defendants an opportunity to present their arguments, and then we'll have a response from both parties, and I want you to feel free to relax and take your time. I'll give you the time that you want to make your arguments. Okay. Anything further before we get started? Mr. Melvin, are you going to want to make any argument on behalf of your clients.

MR. MELVIN: Yes, your Honor.

THE COURT: Okay, very well, so we'll make sure that we do that. Nobody from Onondaga County? Okay.

MR. STAMBOULIEH: That's the one thing I wanted to

address, your Honor, with your Honor's text ordering we serve all of the defendants, we served them by priority mail, I personally mailed out copies of the order to all of the defendants by regular mail as well and I e-mailed all of the defendants the order as well, and as your Honor knows, there were some defendants missing, some of them didn't respond at all. I personally corresponded via e-mail with defendant Stanzione who asked me for additional documents which I gave to him via e-mail.

THE COURT: Okay. Okay. All right. Well, then plaintiff, plaintiffs' counsel, when you're ready you can start your argument, sir.

MR. STAMBOULIEH: Thank you, your Honor. May it please the court, my name is Stephen Stamboulieh, I'm here on behalf of the defendants on a temporary restraining order.

THE COURT: On behalf of defendants?

MR. STAMBOULIEH: I'm sorry, on behalf of the plaintiffs, Judge, I'm very sorry about that, so on behalf of the plaintiffs.

THE COURT: All right.

MR. STAMBOULIEH: This case is very similar to the *Ivan Antonyuk I* case, I'll just refer to it as *Antonyuk I*, and then we have a number of plaintiffs now that have set forth their intentions to carry, to continue to carry, in violation, multiple different violations of the Concealed

Carry Improvement Act. It ranges from carrying in zoos, carrying in parks. Plaintiff LeMan runs a hotel, now he's not going to be able to apply for a state wine and beer license because, as soon as he does, it triggers the exception under the CCIA that would completely make his premises off limits to even him as the proprietor of his hotel. Plaintiff LeMan is also a firefighter, volunteer firefighter, and he carries a firearm when he goes to these various places when he's responding to a call, he doesn't have an opportunity to go disarm himself prior to responding to a call and he is in violation of the CCIA when he responds to those calls now. Ivan Antonyuk, as the court said in *Antonyuk I*, is extremely law-abiding and will absolutely not violate this statute, I mean would not do it.

THE COURT: That was pretty clear from his testimony.

MR. STAMBOULIEH: Yes, sir, and he wanted me to tell the court again and put it in his affidavit that he would not violate the CCIA but if it were enjoined, he would absolutely carry, and he intends to carry if it were enjoined, but until it's enjoined, he won't carry, and he's basically self-censoring, not engaging in constitutionally-protected activity due to, and only but for the CCIA.

And we have a number of other plaintiffs that, you

know, like Ivan, want to carry and intend to carry, Judge, and have been carrying, in violation of the CCIA, and then we have the sixth plaintiff, plaintiff Lawrence Sloane, who doesn't have a permit, can't get a permit, because the sheriff who has not appeared in this case will not accept an application until October of 2023. Now, as the judge acknowledged in *Antonyuk I* --

THE COURT: Could you expound on that when you say he won't accept an application until October of 2023?

MR. STAMBOULIEH: Yes, sir.

THE COURT: What are you talking about? Why is that?

MR. STAMBOULIEH: Yes, sir. So the sheriff has gone to an appointment system and the first appointment that was available was October 24th if I recall correctly, and I have a screenshot of it in the moving papers I believe, or it might be in the complaint, it's in one of them, Judge, that sets forth the next appointment and at the time of filing it was 58 weeks from that day, I think it was the 20th that we filed the case. So --

THE COURT: And how is it that you're relating that waiting period to this new statute?

MR. STAMBOULIEH: So, he's unable to even apply because he has to have all of his social media, he has to have the 18 hours of additional training, and he basically

falls under the new provisions of the Concealed Carry Act in order to apply. As the defendants pointed out, *Decastro*, which is a Second Circuit case which says you have to apply first before you can challenge a handgun licensing scheme, it also talks about the futility and you don't have to apply maybe if there's a futility exception. And we would submit and we provided, you know, good reasons and allegations in the complaint and in the declaration that support the allegations that he's unable to apply. Number one, he does not want to surrender his First or Fifth Amendment right by giving his social media, he doesn't want to do the extra training, he doesn't want to list all his family members and it's the things that are required now, under the statute, that won't allow him to apply unless he surrenders his constitutional rights, and as this court acknowledged in *Antonyuk I*, quoting the Supreme Court, the Supreme Court found it intolerable that you would have to surrender one right to invoke another right, and yet that's what the state is requiring Mr. Sloane to do. But for the CCIA and the sheriff not accepting applications, which I don't know how else you could prove something's futile if the sheriff literally won't accept the application for 58 weeks, he would apply for the permit. He's not prohibited, he would be granted the permit, but he just can't apply for it.

We have a number of defenses that the state has

raised in this current case that I would just like to touch on briefly because we don't have an opportunity to reply in this case. As I already mentioned, we have a certain number of defendants, William Fitzpatrick, who is the DA of Onondaga, Chief Cecile of the Syracuse Police Department, David Soares, the Albany County District Attorney, Joseph Stanzione, the District Attorney of Greene County, and then Sheriff Eugene Conway of Onondaga County. Sheriff Conway is the person that would have accepted Sloane's application if there was an appointment not in 58 weeks.

So briefly what I'd like to do is talk through the Oswego County defendants, Mr. Oakes and Mr. Hilton, who are represented by Melvin, I think his name is, sorry if I get that wrong. They say that they have -- that Pastor Mann, who is the pastor who actually lives in a parsonage that's physically connected to a church, which under the CCIA is a sensitive location, Pastor Mann can't carry there. Pastor Mann's carrying there, he put it in an affidavit -- I'm sorry, in a declaration. It says we haven't provided concrete enough specifics of our violations, and they wanted dates. But he's currently, he currently has a firearm in his home, as I said, connected, it's in a parsonage connected to church property, used for church business, in fact it's owned by the church, they allow him to live there. He says that he always has his gun in the church and in his home and he will

continue to do so. Judge, I don't know what other thing I could provide to the court to show his standing on that particular issue. It seems like they ignored Mann's declaration in paragraph 11 where he says, I intend to continue to possess and carry my firearm while on church property in violation of the CCIA. It seems pretty clearcut, a big difference from Ivan.

Very peculiar comment is that there was, they claim that we have no notice confirming that the church and his home are off limits under the CCIA, and if the court remembers from the opinion where the court listed out all of the various things, it talks about places of worship. The pastor's church is literally called Fellowship Baptist Church. I don't know what other notice could be provided to Pastor Mann that his church is in fact a church and it's off limits under the CCIA, and there doesn't seem to be any indication to the contrary that his church is in fact not a church. I don't think that that's just -- that argument makes any sense.

They also ignored the First Deputy Superintendent Nigrelli where he talked about the enforcement, and he said it right next to Governor Hochul, there will be zero tolerance, if you break the law, you will be arrested. It's on Youtube, we put the link to it, I believe it starts at 37 minutes and 40 seconds or something like that, he comes right

out and says it. They also ignore the sheriff's threat, if you can read it as a threat, that he would enforce the law, and he specifically cited to the section about churches and specifically cited that if you were to be caught violating this in a church, it's one-and-a-third year in prison to four years in prison. So the sheriff has come out and made enforcement threats against it.

They did not disavow -- excuse me, they did not disavow enforcement of the Concealed Carry Improvement Act; rather, in their footnote, they reserved the right to defend its constitutionality at some point in the future. But they didn't -- they didn't do it in this one. Given an opportunity to say that it doesn't -- that the CCIA doesn't apply to Mann in his church, in his home or any of the other allegations, they haven't done that.

And then I'll move to the state defendants who are represented by my friends over here, defendant Hochul, Bruen, and Judge Doran. And the first thing I want to talk about is the futility argument, I touched on it briefly. They cited to a number of different laws, they didn't really fully develop that argument. They quoted to the *Libertarian Party v. Cuomo* but if we go to the actual case and we read the whole citation, it says, in order to challenge the New York firearm licensing laws, a person must either have applied for and been denied a license or "make a substantial showing that

his or her application would be futile." It's not, it's not, you have to apply and then period, full stop, there's nothing else. There's the exception, there's the futility exception. And we've made a substantial showing, I would submit to the court, in that Lawrence Sloane simply cannot apply. And if he could apply, he would have to surrender one right, one constitutional right -- well, in this case two, the Second and the Fifth Amendment, in order to exercise his Second, Supreme Court said that's intolerable. He's not -- he doesn't just have a mere objection or antipathy to the law, that's cited to in *Libertarian v. Cuomo* that says it's not enough to show that you just object to the law, and of course we haven't just objected to the law, we put forth argument and evidence that he can't apply and it's unconstitutional, he shouldn't be able to -- he shouldn't have to trade one right for another.

When we talk -- when they cited to the *Bruen* case, they say that the *Bruen* plaintiffs, Koch and Nash, applied and were denied and that was the proper cause standard. That's a little bit different because when they were applying for that, obviously the sheriff took their application, the licensing official who they sued in that matter as well as Bruen said you just didn't have proper cause, but they didn't make you provide your social media accounts and do all of the extra stuff that they're requiring to do now. So it's not

something that Lawrence Sloane is willing to do to give all of his social media to them. And as he put in his declaration, his Facebook profile is set to friends only so I am not his friend on Facebook so I wouldn't be able to see what he posts and I don't know how the sheriff or the licensing official would be able to see what he posts unless he was required to friend -- accept a friend request or somehow sit in front of the licensing official, which doesn't say that they can't order him to do because the statute says, you know, any other such information that the licensing officer requests, so does that mean passwords? And I know the state defendants said they don't require you to accept a friend request, but I don't know why it would be in the CCIA saying that the sheriff has to do this review of social media if all you have to do is lock down your social media accounts and make them private or friends only. It just doesn't seem like that would be the intent of the legislature in doing that.

They question in their letter brief that a TRO is not applicable to this procedure, and they cited to a District Court's acceptance of a magistrate judge report and recommendation. It's the wrong citation but it doesn't matter because you can literally just follow it back on LEXIS to the original magistrate judge report and recommendation. The case that they cited to did not say that a TRO is the

incorrect procedure. What it said was, the court, the plaintiff in that case, a prisoner, said I'm going to file this TRO and the court said he filed it as a TRO, I will also treat it as a preliminary injunction, which they denied because he was incarcerated and they found no evidence other than his own speculation that the person that arrested him would retaliate against him for filing his lawsuit. So I don't think that there's a problem here when we have multiple violations of constitutional rights, especially with the expansive list of the Concealed Carry Improvement Act sensitive locations and restricted locations, that a TRO would be inappropriate here.

They also cited to the *Frey v. Bruen* case that plaintiffs have not alleged facts showing that they have been prosecuted in the past or have been threatened with enforcement of any of the statutes that they are challenging. And you know, Nigrelli came out and said the things that he said on Youtube that we've cited to in the briefs, certain sheriffs have also made statements that we have included and cited to in the briefs. None of them have come out and said that they are absolutely not going to enforce the law, I don't know how closer you would get to a direct threat than what Nigrelli, who's the first deputy of the state police, when he says that there will be zero tolerance, we will arrest you, I don't know how much more it could be unless

they, you know, called up Pastor Mann and told him that we're coming to get him, and maybe that's why they want the extra three days to stay the TRO, but hopefully that's not what it is.

So as the Second Circuit's provided in *Picard v. Magliano* which we cited to in our brief, credible threat of enforcement is a "forgiving and low threshold standard and courts are generally willing to presume that the government will enforce the law as long as the relevant statute is recent and not moribund," and that's what we have here. This was a law that just went into effect 29 days ago and it's obviously not moribund, there's a lot of press on it, we have state police saying they're going to enforce it, we have DAs and sheriffs saying we're going to enforce the statute. One of the sheriffs said we're not going to charge you with a crime but we are going to confiscate your firearm and send you to the licensing official to see whether or not your permit should be revoked. So I mean, it's more than just where, like the *Frey v. Bruen* case where they simply said we're going to point to this statute and because of the existence of this statute, there is our credible threat. That was the *Frey* case, F-r-e-y, that's not what we have here, we have a lot of comments on it.

And again, Judge, we've gone through good moral character. I don't read the state's response as having

really anything to add that already hasn't been dealt with in the previous briefing that we've submitted, and *Antonyuk I*, like I said earlier, they talked about the social media and how it's limited by statutes, by the statute dealing with good moral character and that it doesn't require passwords but, you know, obviously the statute also says the licensing official can ask for basically whatever he wants. Obviously it's going to be narrowed by, to what's in front of the licensing official at the time, but that isn't really a good comfort to someone that doesn't want to turn over their social media accounts when the social media accounts are what's at issue to the licensing official.

They make an interesting argument about severability, I'm not sure that they meant it this way but this is the way I took it, Judge, is that if there's a constitutional application of one of the sensitive places like, let's take polling places for instance which was directed, which was directly discussed in *Bruen*, then all of them must be constitutional because it's a part of one big package. And that seems to downplay the severability clause that they have in the CCIA. So it's -- I think it needs to be either there's a severability clause and the judge, if the judge were to grant a TRO can blue pencil the remedy he wants, or the whole statute goes away because there's so many different places that are off limits and it's not severable.

And I'm not sure that that's the argument that they've made but that's how I took it to be, that if at least one of them is constitutional, then the whole statute stands and I don't think that's the law.

They seem to have wholly ignored the in-person media requirement, kind of going back to social media disclosure requirement and how it doesn't compel testimonial evidence and that the carry permit application is civil or quasi-civil in nature. And of course, Judge, as you know, if I'm sitting in front of a licensing official and I plead the Fifth, there's going to be an adverse inference that the licensing official is going to say when he asks me, I don't know, anything, do you smoke marijuana and I say I invoke the Fifth, he's going to probably take that adversely and, you know, that would disqualify me from having a permit.

The restricted locations, Judge, we've briefed this extensively. They cite again to the *GeorgiaCarry* case which doesn't apply for the same reasons that your Honor stated in *Antonyuk I*. It has nothing to do with, you know, someone wanting to carry in a church where the church has specifically said you can't carry here. This state has flipped the whole issue around and said you just can't carry in a church, so I don't think *GeorgiaCarry* is a good case for them to cite to for the reasons that we've briefed and for the reasons that your Honor has stated previously.

THE COURT: So your argument there is that the religious congregation or group should be able to decide whether or not they allow carry?

MR. STAMBOULIEH: Your Honor, that's how it works in every state that I'm aware of. If a private business doesn't want something in their business, they have the right to exclude, you know, those people. And the state made a big deal about the right to exclude in their briefing papers from the last case. I don't have a problem with a private property owner excluding someone. If someone comes to my house and wants to hold a rally inside my den, I don't want to have a rally inside my den, I'm perfectly fine to exclude those people. If someone doesn't want to have a gun in their home, they don't have to have a gun in their home. It's completely up to them, but what the state has done is they've flipped it to where the people that want you to come over with the firearm have to be compelled to speak and say yes, please come, or post a sign. As Ivan said in his declaration, he doesn't want to post a sign because then that just makes him a target, maybe his neighbors don't agree with his position on being a gun owner and could lead to him being harassed.

There's something that they cited to about a TRO against state laws is an irreparable injury to the state. So I went back and I kind of looked at these opinions that they

cited to. The one that they cited to, the *Maryland* case was a chambers opinion from Chief Judge Roberts with no other court members on the opinion obviously, and then he cited to Justice Rehnquist's chambers opinion, so it seems like there's no other -- there's no other citation for this proposition that the state has irreparable harm when they've enjoined the law, that was at least cited to in the brief. And what instead they've done is they've cited to one judge's opinion citing to another judge's in-chambers opinion and they're not full court opinions.

I don't think there's any merit when they claim that there's public confusion, if the law were to be enjoined, there would be public confusion. They say that these counties are now implementing the law, they're currently implementing the law, not that this law has already been implemented, they use i-n-g which signifies to me that this is an ongoing implementation of the law so if it were to be enjoined, I think the public confusion would be a little bit lessened because then everyone would know, you know, where they could carry, where they couldn't carry rather than I guess basically everything's off limits now.

One of their claims in their irreparable harm is people want to go about their daily lives without fear of strangers with guns, that's on page 10. I don't think that even factors into the equation. Prior to this concealed

carry law, the same people with guns, the ones that passed the background checks, the ones that passed the invasive mental health check, the ones that sat in front of the licensing official and convinced him that he had proper cause to carry a firearm were going to restaurants, going out to eat, watching movies, having friends over, going to the zoos, checking their firearm at an airport in compliance with federal law, sitting in church or going to parks and all of the other things that the CCIA now makes a felony. And maybe some people have a problem with that, but you know, this is constitutional rights and the Supreme Court said in *Bruen* we have a right to public carry and that they can't declare all of Manhattan a sensitive place. And that's kind of what they've done.

There's something procedurally, I don't think it really matters, the related case issue, they are preserving it for appellate review. It seems to me General Order 12 starts off with, "The assignment plan does not vest any rights of litigants or members of the bar," doesn't seem to be appealable under *United States v. Davila-Bajana* which is a Second Circuit case that said a complaint about the reassignment of this case is legally baseless.

So what I would end with, Judge, is they claim that we haven't articulated any harm so dire that a temporary restraining order could not be stayed and this is when they

asked for, I think it was three days if you're inclined to enter a TRO today. There's no indication that any of them would be harmed by a stay for -- to allow for appellate review. We have ongoing violation of the First, the Second, the Fifth, and the Fourteenth Amendments of the Constitution, ongoing violations. In affidavits our plaintiffs intend to do this, they continue to do this. I don't know, you know, what it would take to show them a situation that's more dire than law-abiding citizens getting arrested for doing something that the Supreme Court has said they have a right to do under the Second Amendment.

THE COURT: Well, Counsel, let me ask you this. If I were to decide to grant the TRO that you're requesting, and the state requests a stay, can you elaborate on what you think a three-day stay, what the harm would be to allow the state to basically take it to the Circuit and say is this judge right or wrong?

MR. STAMBOULIEH: Sure, Judge, absolutely. So as a principle of like a constitutional harm and avoidance of a constitutional harm, for my plaintiffs who are in fear of prosecution because they're currently violating the law and they intend to violate the law, three days might mean the difference of someone catching them with a firearm and this is kind of a public case now, versus if the law was enjoined right now, I could call them and say, hey, the judge entered

this, you know, don't worry, rather than three days. I'm not saying the state's going to do -- engage in any bad faith and go rush out and arrest them, send the SWAT teams, but you know, could we have assurances that if the judge entered that, that they wouldn't go do that to those plaintiffs? And you know, that would be my response for the three days, your Honor. That's it, your Honor, thank you very much.

THE COURT: Okay. Thank you. I don't know if defense counsel have discussed order with Oswego County and the state.

(A discussion was held off the record between counsel.)

THE COURT: I guess you just did.

MR. THOMPSON: Yeah. Thank you, your Honor. James Thompson from the Office of Attorney General Letitia James for defendants Hochul, Bruen, and Judge Doran.

Your Honor, there is no basis for a TRO here. There's no immediate and irreparable harm, there's no money that's going to be wired, there's no SWAT teams that are being sent in, there's no property that's going to be disposed of, there's no ship that's leaving the harbor. There is nothing based on the record in front of us that is imminently about to happen that needs to be stopped in order to preserve the status quo. Instead, what the plaintiffs want is for the court to --

THE COURT: Are you telling me there's no enforcement of this statute at this point?

MR. THOMPSON: I'm not saying that.

THE COURT: Okay.

MR. THOMPSON: I am saying that there has been no specific threat of enforcement against any specific plaintiff that I'm aware of or that has --

THE COURT: But nothing's stopping any designated law enforcement official to take enforcement measures at this point?

MR. THOMPSON: I think that's correct. Nothing is stopping them from doing that, but a general ability to enforce the law is not sufficient for either standing or for imminent harm. And so instead what the plaintiffs are asking for is a mandatory injunction that alters the status quo, it enjoins the law enacted by the people's representatives. That's not what a TRO is for, again, absent some sort of imminent harm or imminent injury that's simply not present here. And even if a mandatory injunction were appropriate in this procedural context, the plaintiffs have not made the heightened showing necessary for one.

So in terms of the merits, I'll go into them because Mr. Stamboulieh did, but as a threshold matter the plaintiffs' standing problems still haven't been fixed, adding additional state defendants doesn't change that. And

that's because standing has three elements to it: Injury in fact, traceability, and redressability. And so simply suing the person who might apply the statute at some point in the future does not mean that there's an injury in fact and doesn't mean that that noninjury is traceable to that person.

So as to Governor Hochul, there's no allegation that she has taken any concrete action other than making public statements and signing legislation, which is not actionable. And the complaint even acknowledges that, "Governor Hochul is not the official to whom the legislature delegated responsibility to implement the provisions of the challenged statute." That's from paragraph 9 of the complaint. Similar problem with Judge Doran, he hasn't done anything to any of the plaintiffs. No plaintiff has an application before him, no plaintiff has had an application denied. And that's fatal to the licensing laws generally. Under *Decastro*, there's no standing to raise that challenge unless an application has been denied or unless there's a substantial showing of futility, which there just isn't here. And unilateral desire not to follow the law or an intent to resist the law does not create futility. A plaintiff cannot create his own futility, and *Decastro* says as much.

As to Superintendent Bruen, your Honor previously indicated in the *dictum* section of your opinion that you view him as a proper defendant for challenges to the training

requirements, the sensitive places prohibitions, and the prohibition on carrying guns onto other people's property without their consent. And we respectfully suggest that some of those should be reconsidered. On training, the state police's only directly relevant role is to approve the curriculum of the training but none of the plaintiffs alleges that they have been harmed by the content of the curriculum. As to enforcement, there's nothing here other than general public statements that the state police will enforce the law. There's never been any prior enforcement against any plaintiff or any direct threat of future enforcement against any specific plaintiffs.

Moving to the merits, we'd start by noting that the standard for a pre-enforcement facial challenge must be applied and the challenger can only prevail if he establishes "that no set of circumstance exists under which a regulation would be valid." That's will from *Jacoby & Meyers v. Presiding Justices*, 82 F.3d at 184. This is one of the areas where we most strongly disagree with the Court's previous *dictum* opinion and it colors the entire analysis. It's not enough for the plaintiffs, or even the court, to imagine a hypothetical where a law could be applied unconstitutionally. Virtually any law could be applied unconstitutionally and virtually any official from the President on down to the dog catcher can act unconstitutionally. That doesn't give anyone

standing to raise a pre-enforcement challenge. Instead, the plaintiffs have to establish that the law can never be applied in a constitutional manner, and I just don't think that that's the case here.

For instance, taking the good moral character standard, we would respectfully argue that the analysis here is still controlled by the Second Circuit's holding in *Libertarian Party* which discussed several specific examples of how the prior good moral character standard, which was broader than the one that's been revised under the CCIA, could be applied constitutionally. For instance, if there are threats or if there are indications that someone has been acting recklessly while intoxicated with a firearm. And the Circuit found that "such examples are not beyond an ordinary person's comprehension, nor are they rare." Moreover there is nothing unconstitutional about a character-based standard under *Bruen*, as is evidenced by a number of other state statutes to which we cite and to which the Supreme Court cites that specifically refer to character or moral character. And the New York standard is in fact significantly narrower because it's not based in character alone or a judgment on whether we like someone or think their character is upstanding. It's based on an individualized determination of dangerousness. That is not open-ended discretion, and instead it falls into a long line of Supreme

Court and Second Circuit precedent and in our letter brief we cite to *Field Day* and *Ward v. Rock Against Racism*.

THE COURT: How does the language of the statute narrow that?

MR. THOMPSON: Well, the prior version of the statute simply said good moral character, full stop. The CCIA narrowed that further to say good moral character means having the character and temperament not to use the weapon to endanger oneself or others. So I think that absolutely narrows the question from a judgment about the person to a judgment about the person's dangerousness.

And so there is this line, this long line of precedent saying that standards grounded in health and safety are not impermissibly vague or discretionary. So there's been a lot of back and forth about open-ended discretion or unbridled discretion, I don't think that's what this statute gives. Instead, I think it asks for a judgment about a person's dangerousness. And that is entirely appropriate under prior precedent and in fact under the history. As Justice Barrett, then Judge Barrett, wrote, history is consistent with common sense. It says that dangerous -- that the legislature may prohibit dangerous people from having guns. And we cited to a long line of history that I won't trace through here, saying that American history supports the proposition that people with individual indicia of

dangerousness cannot and should not have access to firearms.

Moving on to social media, again, this is a situation where the plaintiffs have posited a number of hypotheticals and they're not dealing with the statute as it is, or showing that there is no constitutional application of it. All the statute requires is "a list of former and current social media accounts." That's from Penal Law 400.00(o). It doesn't require you make the licensing officer your Facebook friend, it doesn't require you to disclose your nonpublic posts. And it's a situation where there are many obviously constitutional applications of the statute. Taken from the *Libertarian Party* case, but also we are aware of many examples, all of us as Americans, where mass shooters have shown an intent to commit murder in their public Facebook posts, before legally obtaining weapons that they use to then kill. The *Libertarian Party* decision enumerates several examples of situations, for instance, if there are threats, for instance if there are indicators that someone has been under the influence while recklessly using a firearm, all of those can and have shown up on social media posts, publicly available social media posts and there's no reason why those circumstances must be ignored just because they're on social media rather than something that's testified to in another way.

THE COURT: So based on the language of your

statute, what's your interpretation of what an applicant would have to do to satisfy that requirement?

MR. THOMPSON: I think an applicant would have to, you know, provide what the statute says, which is a list of the social media accounts that he or she has used in the last three years.

THE COURT: And if they're all marked private they don't have to turn them over?

MR. THOMPSON: I think they have to indicate that the accounts are theirs, but they don't have to let the licensing official in or give them their passwords or anything of the sort.

THE COURT: Where does it say that?

MR. THOMPSON: I think it says -- I don't think it's required to say what it doesn't require.

THE COURT: Okay. All right. But you also have language in your statute that says the investigating officer, other information may be requested.

MR. THOMPSON: That's true, and I think that this is where the facial challenge standard comes in. If there is a situation where a licensing official abuses that portion of the statute and requires something that is unconstitutional or improper, I think that's an as-applied case that we could litigate in front of your Honor if and when it comes in. Again --

THE COURT: But you don't see a constitutional issue with your language?

MR. THOMPSON: I don't see a constitutional issue with the language, no, I don't.

THE COURT: Okay.

MR. THOMPSON: And I certainly don't see anything that requires the things that the plaintiff says that this requires. And again, the standard is not whether we can imagine a situation where it would be applied unconstitutionally. The standard is whether there is never a situation when it could be applied constitutionally. And I think under *Libertarian Party*, and that is clearly not the case here, there is a constitutional application. There are plenty of them.

In terms of sensitive places, this is another area where the facial challenge standard comes in. Your Honor's *dictum* opinion indicated that the entire list of sensitive locations should be struck down unless there were historical analogues for restricting firearms at all of the above-listed locations. And that, again, I think is the opposite of what the facial statute -- facial challenge standard requires. Here, we know that there are unquestionably sensitive places that are constitutional. The *Bruen* opinion tells us that, saying, "We are aware of no disputes regarding the lawfulness of such prohibitions," that's from 142 S.Ct. at 2133. And

the *Bruen* court also explicitly said that the list of sensitive places is not limited to schools, government buildings, legislative assemblies, polling places, and courthouses, but that there are additional analogous sensitive places where firearms should not belong. I think that's enough at this stage to deal with the pre-enforcement facial challenge to the entirety of the statute which is what the plaintiffs have brought.

We do have confidence that New York's sensitive places laws are historically justified and we've shared some of the historical justifications in front of you previously and will again in the preliminary injunction briefing. But to the extent that there is a specific case or controversy where a specific plaintiff is, faces a specific threat of prosecution for going into a specific sensitive place, that's something that should be dealt with in the course of an as-applied challenge on a schedule where the government can do historical research, retain experts, do the work that the *Bruen* standard requires of us. It's not something that should be dealt with on a TRO application based only in a few business days.

THE COURT: With regard to this particular part of the statute, you want to address the plaintiffs' arguments with regard to one particular plaintiff in Oswego County, the pastor, Reverend Mann?

MR. THOMPSON: I think this is a good example, again, of the difference between facial and as applied. The -- Mr. Stamboulieh made a distinction between the fact that the plaintiff Pastor Mann lives in a parsonage that is connected to the church. Is the parsonage a church? Is the parsonage a house of worship? Or is a rectory a house of worship as opposed to the church itself? I think that's an interesting question legally. I think that is frankly a decision that would be made in the course of enforcement actions by law enforcement officials whom I don't represent.

THE COURT: And as you know, Reverend Mann is the leader of that congregation in that house of worship; if he wants to carry his weapon into that church, you're saying the state has a right to prohibit him from doing that.

MR. THOMPSON: I think there is a deep historical tradition of prohibiting guns in houses of worship in the United States. There are a large number of historical precedents for that. So yes, I think prohibiting guns in a house of worship is something that is a part of American history and tradition and we would welcome the opportunity to show that. And, you know, we're all aware of Mother Emanuel, Tree of Life Synagogue, any number of -- Sutherland Springs, Texas, any number of instances where persons, many cases, persons with legal -- with legal possession of guns have committed horrors in houses of worship. So I think, yes,

that is something that is justified by American history and tradition. And I'm happy to go into any other specific contexts if you'd like.

Otherwise, I would move on to private property. Before I do, Mr. Stamboulieh briefly mentioned in-person interviews and character references and training. We did not address those in our letter brief, mostly because your Honor had already indicated that you viewed those as likely to be constitutional and because frankly we felt we were pushing it with an 11-page letter brief as it stood, but that is certainly something that we can address in the future and we would submit that if your Honor indicated that there was not a likelihood of success on the merits previously, I don't think there's anything that's been put in front of your Honor that would change that, certainly on a TRO application.

As to private property, I think the new complaint is clarified because it really makes clear that the plaintiffs are claiming that the Second Amendment presumptively grants them a right to carry a gun onto other people's property and into their homes. That's something that's present in paragraphs 190 and 203 of the complaint. There is no support of that in the text of the Second Amendment or in the Supreme Court's jurisprudence. I think it's actually directly contrary to Justice Scalia's focus on the sanctity of the home and the need to protect the home in

the *Heller* decision. And I think it's important to bear down on what this statute actually does. By setting the default where it does, New York's private property protection makes sure that the homeowner gets to make an informed decision. He gets to know whether someone is bringing a gun onto his or her property or into her home, and gets to say whether or not that's okay with them, gets to consent, yes or no, do I want not just the person but the gun on the property. If the -- if the default were set otherwise, if the default were, guns can go anywhere unless there is specific statements forbidding it, you know, one of the -- one of the best hypotheticals I can think of, it's February, the heater goes out in your house, you call a repairman. Do you have the right to know if the repairman is bringing a gun into your home? I think most people would expect that they would have the right to know that and to make that decision. And there's no harm to the repairman in saying, hey, I normally carry a concealed weapon, is it all right if I do that here? The homeowner should be able to know that, the homeowner should be able to make that decision and that's what is accomplished by setting the default where it is. And I think that's something that is, that the *GeorgiaCarry* court was concerned with when they talked about "a private property owner's right to exclusively control who and under what circumstances is allowed on his or her own premises." Laws

that set the default empowering owners to give consent as to the carrying of a firearm on their property have a solid historical basis, as we demonstrated. I think there's no reason to believe that a tradition that was supported by five identified state laws in the 18th and 19th century is not sufficient under *Bruen*. Particularly because such a finding would indicate that those laws were presumably unconstitutional for those centuries despite never having been struck down or challenged.

Again, there's no immediate and irreparable injury here that would immediately justify a temporary restraining order. No plaintiff has submitted an application for a concealed carry permit, none has been denied, no one has alleged they plan to violate the law before a preliminary injunction motion can be heard or that there will be enforcement against them. There is simply no basis to find that any plaintiff will in the coming days, "suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits," in this case a preliminary injunction decision, "to resolve the harm." That's from *Hart v. Town of Guilderland* citing, quoting *Grand River Enterprise v. Pryor*, 481 F.3d at 66.

Responding to a couple of Mr. Stamboulieh's arguments, as to the sheriff who is not present here, all I'll say is I have no visibility into what the situation is,

but your Honor raised a very good point which is that it's not clear that whatever delay in the sheriff's processing is caused by the CCIA. I have no idea how long the wait time was if the application had been put in two months ago versus today.

In terms of whether someone has to surrender their rights to make an application, I don't think that that's the case. In terms of the Fifth Amendment, first of all, there's no standing because no one has invoked the Fifth Amendment, no one has had any consequences brought against them for invoking the Fifth Amendment, no statement has -- no compelled statement has been used against anyone in any sort of criminal action.

THE COURT: Let's take that a step further. Don't -- isn't there a requirement that the applicant would have to swear to the truth of their application?

MR. THOMPSON: Yes, I believe that's likely to be the truth. But I think that's the case on, you know, many forms and applications that people fill out in a large number of contexts. That doesn't necessarily mean that there is, you know, compelled self-incrimination. Particularly --

THE COURT: Well, the statutes that you're referring to, can you draw one to my attention that requires them to provide their social media accounts and provide other presumably possibly private information and swear to the

truth of it?

MR. THOMPSON: I don't have a specific one in front of me but I think we can all understand that we are all frequently in the course of any number of interactions with federal, state, local government, we put down our addresses, our Social Security numbers, our e-mail addresses, any number of pieces of information about our lives.

THE COURT: Identifying information.

MR. THOMPSON: Identifying information, as is the case --

THE COURT: Doesn't the statute take it a step further?

MR. THOMPSON: I actually think that this is essentially identifying information, all that is required is a list of your social media accounts, essentially identifying your online presence, and beyond that --

THE COURT: Names of family, people that you live with, spouses, former spouses, all, again, would be your position that's just identifying information?

MR. THOMPSON: I think that that is information that is, you know, generally, generally known and I don't think that it's -- again, I don't think that there has been any Fifth Amendment violation here. I don't think there's any standing, anyone has been forced to give that information, I don't think anyone has had that information

used against them.

THE COURT: Don't they have to provide that information as part of their application?

MR. THOMPSON: Three do have to provide that information as part of their application, that's true.

In terms of compelled speech, the idea that the private property protection is compelled speech, that is not the case. No one is compelled to say anything. Nor if they do say anything are they compelled to speak the government's position. Everyone -- no one, and you can determine what, if anything, you want to say in terms of granting consent for people to bring guns onto your property, and the government doesn't tell you what to do.

THE COURT: Isn't that presumptively illegal unless the property owner says you can bring a gun?

MR. THOMPSON: That is true.

THE COURT: Okay, so it's not a case where the property owner says nothing and, you know, therefore a person with a carry permit can go onto their property legally?

MR. THOMPSON: That's true, but in the converse, if the default was guns are allowed anywhere absent someone speaking up and saying no, you have the same problem, right? The people with carry permits would be allowed to take guns onto your property and into your home, again, absent someone speaking up --

THE COURT: So again, you're making a decision for the citizen, you're making the decision by saying you must tell them that it's okay; otherwise it's presumptively not.

MR. THOMPSON: Absolutely not, your Honor. The citizen is allowed to take whichever position he wants to take, he or she wants to take. The government does not tell them which position to take, the government -- and there is no -- there is nothing requiring them to carry --

THE COURT: The government says it's illegal unless you say it's okay, that's what the government says in your statute.

MR. THOMPSON: That's true. But similarly, if the government were to say that guns are allowed unless you say it's okay, there would be the same need to speak. The key is that the government doesn't tell you which position to take. The government doesn't tell the owner that you have to say guns are allowed or guns are not allowed. The decision is up to the owner, it's not the state that takes that action.

THE COURT: So you don't view it as a state speaking for the property owner.

MR. THOMPSON: I do not. It is simply the government setting a default property rule in the way that states set property rules. Let me just take a quick look.

THE COURT: Take your time, sir.

MR. THOMPSON: Sure. Thank you, your Honor.

Lastly, let me just briefly touch on, as said previously, temporary restraining order is not appropriate in this case. In the event that the court does decide to grant a TRO, we would ask that its effect, first of all, be limited to the moving parties, and we would ask that any TRO be stayed pending appeal, or at a minimum for a period of three business days, to allow the state to seek emergency relief at the Second Circuit. So because a TRO is not appropriate in this case because there is no imminent harm, because it's not a proper vehicle for a mandatory injunction, and because mandatory injunction is not warranted, we ask that the TRO motion be denied.

THE COURT: Thank you, sir.

MR. THOMPSON: Thank you, your Honor.

MR. MELVIN: Good afternoon, your Honor. Edward Melvin on behalf of the Oswego County District Attorney Greg Oakes and the Oswego County Sheriff Don Hilton.

Your Honor, as you know, the Oswego County defendants are only challenging the standing issue with respect to this TRO, and we request that the court find *sua sponte* no subject matter jurisdiction which would then allow dismissal of the action against the Oswego County defendants.

Very quickly, your Honor, as to standing, I'd like to address the arguments made by plaintiffs' counsel this morning. With respect to the standing aspect of credible

threat of prosecution, plaintiffs' counsel argues two examples demonstrating a credible threat of prosecution. One, statements made by a state police representative, lieutenant perhaps, Nigrelli, has nothing to do with Oswego County. Secondly, he makes reference to a Facebook post --

THE COURT: Why wouldn't he have anything to do with Oswego County when he has statewide jurisdiction?

MR. MELVIN: With respect vis-a-vis my defendants, I mean, he may have it with --

THE COURT: I see what you're saying.

MR. MELVIN: Yes. With respect to Sheriff Hilton, he made a generalized statement that he would enforce the CCIA. I mean, that's his job, but the -- that's not the standard, your Honor. And you put out, you put forth the standard in *Antonyuk I*, in which Mr. Antonyuk failed to allege that he's ever been threatened with arrest and prosecution by law. And that's set forth in, by the Second Circuit just this past July in *Does 1 to 10 v. Suffolk County*, and if you recall, it's in your decision, in that case, the plaintiffs were in possession of illegal firearms and the Suffolk County Police Department sent them notice and said, you know, your possession is illegal and they also said we intend on arresting you. The Second Circuit said that was not sufficient for credible threat of prosecution or standing.

Here, it really boils down to Pastor Mann's position is that the CCIA exists, therefore he has standing. That's just not enough under the Second Circuit. So, your Honor, for that reason, we respectfully request that you *sua sponte* determine that there is no subject matter jurisdiction and that would result in the dismissal of the action against the Oswego County defendants. Thank you.

THE COURT: Thank you, sir.

MR. STAMBOULIEH: If you could just give me one minute, I'm trying to find something.

Judge, if it's okay I'll address Mr. Melvin's arguments first. With respect to the Oswego County District Attorney, there are multiple, multiple cases that say that the District Attorney is the proper defendant. As this court remembers in *Antonyuk I* brief, I cited to *Avitabile v. Beach* for the proposition that the superintendent was the correct party and the court admonished me in the footnote that we also had the District Attorney in that case as well. What happened in that case is we dismissed the District Attorney because it was agreed to that Beach, the superintendent, at that time was the proper party. So at the end of the day Beach, the superintendent, was the proper party. But there's multiple cases. There's *Avitabile*, there's *Sibley v. Watches* where it talks about courts in this circuit have held that District Attorneys are proper defendants in suits challenging

the constitutionality of state laws. And I know he cited to the *Doe* case where those individuals got a specific letter to them saying, you know, turn in your firearm. If I recall that opinion correctly, the court found that due to the length of time that nothing's happened, that the court -- I'm sorry, the Suffolk Police obviously knew that these people had firearms and yet did nothing, and if I recall correctly, it said due to the passage of time and nothing happening, there's obviously no credible threat of enforcement. And here we are 29 days into this new law where we have people on the record saying that they're violating, will violate, intend to violate the law. And that brings me to what --

THE COURT: So your position is that there is a credible threat of enforcement and you're stating what factors that demonstrate that.

MR. STAMBOULIEH: Well, for one, the sheriff of Oswego County did talk about enforcing the law, and while the District Attorney I don't believe has made any comments about it, he is the one that's ultimately, it is well established that the District Attorney and the District Attorney alone should decide when and in what manner to prosecute a suspected offender. So even if the sheriff arrests someone or maybe doesn't arrest him but takes his firearm, the District Attorney is the statutorily-authorized officer to come in and decide whether or not to charge him. So it

doesn't matter if the sheriff says he's not going to charge him but merely revoke the firearm, still turn him over to the licensing official, maybe that person loses his Second Amendment right to public carry. Did I answer the court's question? Okay.

Turning to what Mr. Thompson said, that no one has, no one -- I can't remember his exact words and I'm going to butcher it and I'm sorry. Pastor Mann is currently violating the law, I've said it before, he said it in his declaration so when Mr. Thompson says there's no one currently -- no dire emergency, no one's violating the law, I think a fair reading, when Pastor Mann says he has and will continue to carry in his church and in his home which is part of the church, I think that would be fair to say that that's probably a violation. I will point the court to the Exhibit 1 and I'll just read it. Where it talks about social media, the court had some questions about the passwords and, you know, am I going to have to friend request someone, and Mr. Thompson says that's not what's necessary. But what the statute says is that it requires a list of former and current social media accounts of the applicant from the past three years to confirm the information regarding the applicant's character and conduct as required in the good moral character part of the paragraph. So if I come to the licensing officer and say, you know, Judge, here are my social media accounts,

they're all private, he's going to say, well, I can't confirm this information regarding the applicant's character and conduct, I need you to authorize me to see your profile. I don't know how else -- I don't know why they would put it -- why the legislature would put this language in if it's not necessary for the licensing official to take the information in the social media to confirm the information regarding the applicant's character and conduct as required.

So I don't know what else to say about that other than it seems like a logical question when the very next part of this, "any other information required by the licensing officer that is reasonably necessary and related to the review of the licensing application," for that licensing officer to just say, add me as a friend, hand over your phone. I mean, we've got all kinds of different violations that are concurrent with what's happening at that point and I don't think they're going to be able to just say no. And at least not get a permit.

Judge Doran, I know that Mr. Thompson made some comments about Judge Doran. Judge Doran is Corey Johnson's licensing official, that's who signed Mr. Johnson's permit and we believe he would also be Mr. Sloane's licensing official. Mr. Doran, Judge Doran I should say, hasn't ruled on the application because Mr. Sloane can't apply for that, for the permit until October of 2023, if he's willing to

trade his constitutional rights, the First and the Fifth, in order to fill out the application, turn over his social media accounts, befriend the licensing official, give him his social media, or the sheriff, whoever wants it, list all of the information that's required on the application. And I think the Supreme Court says that that's -- you don't trade one right for another, you don't have to surrender one right for another. So Judge Doran would be the licensing officer for Sloane. I took the long way of saying that but that's what I meant to say.

It was also curious, Mr. Thompson saying that Pastor Mann would basically be subject to maybe an enforcement action to decide the interesting question of whether or not his parsonage on church property is part of the church or a sensitive place under the law. I don't think the law requires Mr. -- I'm sorry, Pastor Mann to be arrested so he can decide and, you know, subject to a felony if he's correct in his interpretation or incorrect in his interpretation. I don't believe that that's what's necessary.

The deal about the "horrors" in the house of worship, some of those were stopped by law-abiding citizens carrying firearms in church. And one of the problems with this, with this specific law is, as was just filed yesterday, yesterday or today, I'm sorry, in the Southern District of

New York, Jewish synagogue filed a lawsuit over them not being able to have guns in the synagogue due to, you know, hateful threats against the Jews and the Jewish religion. So it takes away the rights of the pastor --

THE COURT: Counsel, how do you respond to the state's position that there's historical, plenty of historical analogues about the state indicating that houses of worship are not a place where carry permits would be allowed?

MR. STAMBOULIEH: So we have historical analogues going back to, I want to say 1670, I believe, where it talks about how people were required to bring guns to church and into places of worship. So there's historical analogues on both sides. Of course *Bruen* says you don't have to have an exact historical analog, and we're not taking the position that people are going to be required to bring guns to church.

THE COURT: You're taking the position that the congregation should have the right to decide, should they decide they want to defend themselves and they know their congregants and synagogues or churches that they have the right to have their congregants bring weapons lawfully.

MR. STAMBOULIEH: Pastor Mann has taken specialized training, specialized training from a church security instructor to be able to defend his church. He has authorized certain people who have also taken church

security-specific training to carry in church. And I know that this state wants to say that we're protecting property rights but what they've done is they have usurped all of the property rights from all of these different businesses where even the owner of a business, Pastor Mann, the proprietor of the church, the pastor of the church, can't carry in his own church, might not be able to carry in his own home, might be committing a felony right now. Anyone else that owns a business in Times Square, and I know they said that we've just put some letters of some things that have happened in New York City, they've made all of these places sensitive places and sent letters to these people, which I know is not in this district, Judge.

THE COURT: Okay, thank you.

MR. STAMBOULIEH: I'm sorry, Judge.

THE COURT: We have enough issues here, I don't know if we need to drag Times Square into it.

MR. STAMBOULIEH: Okay, but they say these businesses in Times Square now are sensitive places so you can't have your business premise permit, whatever they call it down there, is go no good anymore, turn your guns in or take them away. And that's kind of what the state is doing here, so everyone that could carry lawfully prior to 9/1, *Bruen* was supposed to expand the Second Amendment, New York took the opposite approach, locked it down tight. So as

Governor Hochul said, the only place you can carry, probably some streets. Do you have any other questions, Judge?

THE COURT: I do not.

MR. STAMBOULIEH: Okay, thank you.

THE COURT: Thank you.

MR. THOMPSON: Thank you, your Honor. Just a brief response to some of the points raised by Mr. Stamboulieh.

First of all, in terms of who is a proper party, I think it's important to remain focused on the fact that standing has three elements to it. It's not just redressability, it's also injury in fact and traceability. So simply suing the right person doesn't mean that you have standing. For instance, Judge Doran may be the proper person to sue in the event of the denial of an application, but he hasn't denied an application. So while there may be redressability, there's no injury in fact and no injury traceable to Judge Doran.

THE COURT: Let me ask you this. Is he going to review applications unless they comply with the new statute?

MR. THOMPSON: He would certainly be --

THE COURT: Presumably, he won't.

MR. THOMPSON: He would presumably be referring -- reviewing applications, I couldn't tell you how he would do it other than to say that if and when he does, I'm sure it will be in accordance with the law and will be --

THE COURT: As a sworn New York State court judge, he's going to be compelled to comply with the laws, so therefore those applications, if they don't comply with this new section, he's not going to entertain.

MR. THOMPSON: I think it would be entirely speculative to say how Judge Doran would refer applications that no plaintiff has put in front of him. I don't think that, you know, I think that would be an exercise in hypotheticals among us, just as it would be to, for us to guess how your Honor would review the next case in front of you.

So again, it's not just redressability, it's not just suing the right party, it's suing the right party who has caused injury, and that's not the case in this matter.

Similarly in terms of threats of enforcement, what is missing here is a credible threat of enforcement against these specific plaintiffs. That's what hasn't been alleged, that's what's not there. No one has talked to Pastor Mann, no one has threatened enforcement against Mr. Antonyuk or any other specific plaintiff, and that is what the cases that we cite --

THE COURT: Is Pastor Mann violating the new statute?

MR. THOMPSON: Is he violating the new statute? Presumably if he carries a gun into a church, yes, he's

violating the new statute, but has anyone told them that the statute will be enforced against him specifically or warned him off doing that? I don't believe that's the case, and that's the distinction. It's not just enough to have a general statement that the state will enforce the law in general, there needs to be a specific threat against a specific plaintiff in order for there to be standing.

In terms of Mr. Stamboulieh's discussion of social media and the list of current and former accounts, with that list, you can view a person's public social media postings, what that account has posted publicly. There is nothing in the statute that says that there has to be any invasion, a password given, any nonpublic access granted, there's nothing in the statute that says that. And again, the facial challenge statute -- standard is important here, because the question is not can we imagine an unconstitutional application; the question is can we imagine no possible constitutional application, and that's just not the case here.

Mr. Stamboulieh pointed out that the statute says that the list of social media accounts is for the purpose of confirming information about the character statute -- the character standard. I think that actually narrows the scope of the statute, because again, it is not an open-ended, it's not open-ended discretion, it's not an open-ended dive into

the person's background, it's not looking into someone's Onlyfans site. It is checking to see whether there are those individualized indicia of dangerousness or risk that is what the good moral character standard is focused on, and that is supported by history and tradition, as Judge Barrett pointed out.

So when Mr. Stamboulieh says that what happens if a licensing official says add me as a friend, hand over your phone, these are hypotheticals and these will give rise to an as-applied challenge if they happened, but they haven't. And if and when something like that were to happen, then we could litigate that in front of your Honor or one of your colleagues, but again, the question is not can we imagine a situation where the statute is unconstitutionally applied. That is not what's required in the analysis.

The same standard, the same question goes to the question of whether the parsonage is part of a church. If the statute is constitutional, if the statute can be constitutionally applied, we don't need to invent a scenario where it's applied unconstitutionally. In terms of the history of houses of worship, this is an area where there are, as Mr. Stamboulieh said, laws from the 1620s, 1630s, 1640s that say you must bring your gun to church, and this is of course from a very different time of American history when there were much greater concerns about violence and attack on

the way there. But the statutes that say you may not, the statutes that say that guns may not be brought into church or guns may not be carried on the sabbath, those come from the history of the United States of America in the 18th and 19th centuries, which is the primary area that we're concerned with. And I don't think that colonial statutes from the 1630s should trump American history from the 18th and 19th century.

THE COURT: You don't account for recent history of shootings in synagogues and churches, you talked about in your earlier argument how horrible that is. Counsel makes a point that, you know, if it's legal for a congregation and they so choose to have their congregants have weapons if they have concealed carry, that also is an issue that should be addressed, which is not taken into account in your statute.

MR. THOMPSON: Well, again, I think the *Bruen* test is about history rather than interest balancing. If this, if this case, if the statute, if the standard that the Supreme Court had given us was, we need to take everyone's interest into account, that would be a very different discussion that we were having in front of you. But the question is, is history and the history --

THE COURT: We're talking about constitutional rights and history, okay, and there's history on both sides.

MR. THOMPSON: Yes, but the American history, not

the pre-American history, supports the ability of the state to ban guns in churches as any number of states did.

And lastly, again, on private property, I think the rhetoric got a little heated but no property rights are being usurped here. The owners get to decide and they get to know in order to make the decision whether guns should be allowed on their properties. And I think that's their right, I think it's an appropriate thing to do.

And with that, your Honor, we ask that the TRO motion be denied and we thank you for listening to us.

THE COURT: Thank you, sir.

MR. THOMPSON: Thank you.

MR. MELVIN: Your Honor, plaintiffs' counsel made reference to an argument made by the Oswego County defendants as to the DA not being a proper defendant. We have not made such an argument. Our argument's squarely based on the lack of standing. And to that end, plaintiffs' counsel distinguished the *Does 1 through 10* case by giving the impression that a passage of time is some kind of aspect of the credible prosecution analysis and it's not. It just so happens that in that case, the plaintiffs received a threat with a notice and there was a passage of time, and so after that point in time the Second Circuit said, well, there's no threat remaining after they made a specific threat. That's exactly what we have here. There's no specific threat,

there's no threat whatsoever. So the passage of time, your Honor, is immaterial to the analysis of a credible prosecution.

THE COURT: So how do you address what they've indicated in their papers that Sheriff Hilton has indicated he would enforce the law?

MR. MELVIN: Right, that's a generalized statement that he's making as sheriff, there's nothing with respect to plaintiff Mann. Thank you, your Honor.

THE COURT: Thank you. Okay. Unless there's anything further, that will complete the argument. You have a briefing schedule on the preliminary injunction, the court will issue a decision on the TRO, and we'll look for your papers. Okay? Thank you.

MR. STAMBOULIEH: Thank you, Judge.

MR. THOMPSON: Thank you, your Honor.

THE CLERK: Court's adjourned.

(Court Adjourned, 12:28 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, JODI L. HIBBARD, RPR, CRR, CSR, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of New York, DO HEREBY CERTIFY that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 30th day of September, 2022.

/S/ JODI L. HIBBARD

JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter